

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5813 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DILIP @ VALI GOVINDRAM TEKWANISINDHI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UDAY BHATT LD. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 10/10/2000

ORAL JUDGEMENT

1. The petitioner -detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of the order of detention dated 15.5.2000 (Annexure-A) passed by the respondent no. 2 in exercise of his powers conferred

upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds detention, the petitioner-detenu is a 'bootlegger' within the meaning of section 2(b) of the Act and his activities are prejudicial to the maintenance of public order. To arrive at subjective satisfaction, the detaining authority has placed reliance on one prohibition case lodged in Prohibition Station (North Region) which is referred to in the grounds of detention. He has also placed reliance on the statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9 (2) of the Act. Such two statements were recorded on 13.5.2000 and both the statements were verified by the detaining authority on 14.5.2000 and on the next date i.e. on 15.5.2000 he has passed the order of detention, which is challenged in this petition.

3. Though rule has been served upon each of the respondents, the respondents have not filed affidavit in replies, in reply to the main petition controverting the grounds of attack to challenge the order of detention.

4. Mr HR Prajapati learned advocate for the petitioner has argued that the detaining authority has wrongly claimed privilege under sec. 9 (2) of the Act because he has not made any exercise to verify the correctness of facts of witnesses stated in the statements. He has placed reliance on reliance on the authority authority of Kalidas Chandubhai Kahar vs. State of Gujarat & Ors. reported in 1993(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under sec. 9(2) of the Act. It has been further held that at the time of exercising the privilege under sec. 9(2) of the Act, balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Article 22(5) of the Constitution on the other. If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not ? Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make

an effective representation on that basis. As against this, there is a provision under sec. 9(2) carved out on the basis of Article 22(5) of the Constitution which provides that nothing in sub-sec. 1 shall require the authority making such order to disclose facts which it considers to be against the public interest to disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other. It was held that looking to the respective dates of verification of statements and date of order of detention as stated in that case the detaining authority had no sufficient time to examine the possibility of exercising the power under Sec. 9(2) of the Act and this Court held that looking to that facts it is a wrong exercise of powers under Sec.9(2) of the Act which has affected the right of making effective representation under Article 22(5) of the Constitution of India and, therefore, the continued detention of the detenu is bad and illegal. Keeping in mind the aforesaid legal position with regard to privilege under Sec. 9(2) of the Act, here in this case also, the statements were verified on 14.5.2000 and on the next day the order of detention came to be passed. Hence, privilege claimed by him is not properly claimed in accordance with law and, therefore, the order of detention deserves to be set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 15.5.2000 passed by the respondent no. 2 with respect to detenu is set aside. The detenu is ordered to be released forthwith, if he is not wanted in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)

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